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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

AMERICAN BANKERS INSURANCE
COMPANY OF FLORIDA,

Plaintiff/Counter-Defendant,

v.

MARY CAMERON,

Defendant/Counterclaimant.

CV 19-138-SPW-TJC

NOTICE OF SUPPLEMENTAL
AUTHORITY

Plaintiff American Bankers Insurance Company of Florida (“American Bankers”) respectfully submits this Notice of Supplemental Authority pursuant to District of Montana Local Rule 7.4 in support of its Motion for Summary Judgment and Briefs in Support (Docs. 21, 22, 36). On December 22, 2020, the Montana Supreme Court issued an opinion in *Farmers Insurance Exchange v. Wessel*, 2020 MT 319 (Dec. 22, 2020), granting summary judgment to an insurer

because there was no coverage under the policy because the insureds’ intentional acts did not constitute an “occurrence.” *Wessel*, ¶¶ 13-17. In reaching its decision, the Court noted that the insurer was permitted to rely on only the allegations of the complaint and counterclaim in determining its duty to defend. *Wessel*, ¶¶ 14, 16, 19. The Court also held that because there was no coverage under the policy—and no corresponding duty to defend—there cannot be a duty to indemnify, thus rejecting the insureds’ argument that the duty to indemnify was not ripe for determination. *Wessel*, ¶¶ 23-24.

This authority is pertinent and significant to Plaintiff’s arguments regarding its reliance on the allegations of the Complaint against Defendant in determining its duty to defend, the determination of whether a Complaint alleges an “occurrence,” as well as Plaintiff’s arguments concerning its duty to indemnify in the event this Court determines there is no duty to defend.

This authority was not cited because it had not yet been issued when American Bankers filed its briefs in support of its Motion for Summary Judgment.

Plaintiff’s arguments relating to the above issues can be found at Doc. 22 at 8-13; 14-16 and Doc. 36 at 3-7; 10-14.

DATED this 29th day of December, 2020.

/s/ Leah T. Handelman

Attorneys for Plaintiff/Counter-Defendant